



OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN

GERALD C. MANN  
ATTORNEY GENERAL

Hon. William W. Allen  
County Attorney  
Lavaca County  
Hallettsville, Texas

Dear Sir:

Opinion No. 9-1868  
Re: Trial fees - Justices of the  
Peace - Article 1052, Code of  
Criminal Procedure.

Your request for opinion has been received and carefully considered by this department. We quote from your letter of request as follows:

"Please give me your opinion on the following:

"In a Justice Court in a County where the precinct officers are on the fee system, a defendant in a misdemeanor case in Justice Court pleads guilty, but the fine is not then collected and the defendant is allowed to go at large; the Justice of the Peace to whom the plea of guilty is made does not issue commitment, and a newly elected Justice of the Peace in the following year issues commitment and the defendant is placed in jail and therein lays out his fine and costs of court. The question here presented is, to which Justice of the Peace does the County owe the trial fee of \$2.50, the Justice of the Peace to whom the plea of guilty was made or to the new Justice of the Peace who issued the commitment and had the defendant placed in jail? Would it make any difference if the first Justice of the Peace had collected a portion of the fine and costs?

"Art. 1052 of the Code of Criminal Proce-

dure provides that \$2.50 shall be paid by the county to the Justice of the Peace, for each criminal action tried and finally disposed of before him. This is the only article applicable to this case, and it leaves the situation of a trial under the first Justice of the Peace and a final disposition of the case under the new Justice of the Peace."

Article 1052, Code of Criminal Procedure of Texas, reads as follows

"Three Dollars shall be paid by the county to the County Judge, or Judge of the Court at Law, and Two Dollars and fifty cents shall be paid by the county to the Justice of the Peace, for each criminal action tried and finally disposed of before him. Provided, however, that in all counties having a population of 20,000 or less, the Justice of the Peace shall receive a trial fee of Three Dollars. Such Judge or Justice shall present to the Commissioners' Court of his county at a regular term thereof, a written account specifying each criminal action in which he claims such fee, certified by such Judge or Justice to be correct, and filed with the County Clerk. The Commissioners' Court shall approve such account for such amount as they find to be correct, and order a draft to be issued upon the County Treasurer in favor of such Judge or Justice for the amount so approved. Provided the Commissioners' Court shall not pay any account or trial fees in any case tried and in which an acquittal is had unless the State of Texas was represented in the trial of said cause by the County Attorney, or his assistant, Criminal District Attorney or his assistant, and the certificate of said Attorney is attached to said account certifying to the fact that said cause was tried, and the State of Texas was represented, and that in his judgment there was sufficient evidence in said cause to demand a trial of same."

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Opinion No. 0-616 of this department, holds that Article 1052, Code of Criminal Procedure of Texas, as amended, provides that the Justice of the Peace shall receive \$2.50 in all counties having a population of 20,000 inhabitants or less for each criminal action tried and finally disposed of before him, such fees to be paid by the county when such claims are filed in compliance with Article 1052, Code of Criminal Procedure, and that it is immaterial whether the defendant who is convicted in such criminal action pays his fine and costs or works his fine and costs out on the county farm, public roads or other public works of the county, or satisfied such fine and costs by staying in jail a sufficient length of time to discharge his fine and costs.

Opinion No. 0-1759 of this department holds that the justice of the peace's right to compensation does not depend upon the collection or enforcement of the judgment but rather on the rendition of his final order and that therefore, the county auditor cannot legally withhold the justice's fees on cases that are appealed to county court and pay such fees only upon disposition of the cases by the county court.

We enclose herewith copies of opinions Nos. 0-616 and 0-1759 of this department.

You are respectfully advised that it is the opinion of this department that under your statement of facts submitted to us, the justice of the peace who took the plea of guilty would be entitled to the trial fee and that it would be immaterial as to whether or not the first justice of the peace had collected a portion of the fine and costs.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By /s/  
Wm. J. Fanning  
Assistant

WJF:AW  
ENCLOSURE

APPROVED FEB 23, 1940

/s/ Gerald C. Mann  
ATTORNEY GENERAL OF TEXAS

Approved  
Opinion Committee  
By B.W.B., Chairman